

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte FRANK S. CACCAVALE

Appeal 2007-2266
Application 09/804,320
Technology Center 2100

Decided: December 10, 2007

Before JAMES D. THOMAS, LEE E. BARRETT, and
SCOTT R. BOALICK, *Administrative Patent Judges*.

THOMAS, *Administrative Patent Judge*.

DECISION ON APPEAL

This appeal involves claims 1 through 10, 13 through 15, 20 through 29, 38, and 39. Of original claims 1 through 40, these claims remain from those claims indicated at pages 3 and 10 of the Answer that the Examiner has objected to, including claims 11, 12, 30, and 31, and those claims the Examiner has allowed, including claims 16 through 19, 32 through 37, and 40. We have jurisdiction under 35 U.S.C. §§ 6(b), 134(a).

We reverse.

As best representative of the disclosed and claimed invention, independent claim 1 is reproduced below:

1. In a data processing system including at least one client, a first file server coupled to the client for data access of the client to at least one file in the first file server, and at least a second file server coupled to the first file server for data access of the second file server to the file in the first file server, the second file server being programmed with a virus checker program, the virus checker program being executable by the second file server to perform an anti-virus scan upon file data in random access memory of the second file server, a method comprising:

the first file server responding to a request from the client for access to the file in the first file server by determining that an anti-virus scan of the file should be performed, and initiating the anti-virus scan of the file by sending to the second file server a request for the anti-virus scan including a specification of the file, and then

the second file server responding to the request for the anti-virus scan by invoking the virus checker program to perform an anti-virus scan of the specified file by obtaining file data of the file from the first file server and storing the file data of the file into the random access memory of the second file server and performing the anti-virus scan upon the file data of the file in the random access memory.

The following references are relied on by the Examiner:

Lam et al.	US 5,926,636	Jul. 20, 1999
Chen	US 5,960,170	Sep. 28, 1999
Cassagnol et al.	US 6,385,727 B1	May 07, 2002 (filed Sep. 25, 1998)

Claims 1 through 7, 9, 13 through 15, 20 through 26, 28, 38, and 39 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Chen. Chen is combined with Cassagnol within 35 U.S.C. § 103 as to claim 10. Lam is

added to this latter combination of references to reject claims 8, 27, and 29 also within 35 U.S.C. § 103.

Rather than repeat the positions of the Appellant and the Examiner, reference is made to the revised Brief filed on December 9, 2005 (no Reply Brief has been filed) for Appellant's positions, and to the revised Answer mailed on February 2, 2007 for the Examiner's positions.

OPINION

Turning to the first-stated rejection under 35 U.S.C. § 102 encompassing independent claims 1, 13, 20, and 38, we generally agree with Appellant's general position at the bottom of page 8 of the Brief that Chen does not operate in the manner specified by independent claim 1, and that the servers are not programmed as required by independent claim 20. Corresponding arguments are subsequently set forth as to independent claims 13 and 38.

The Examiner's initial position as to Chen as applied to independent claim 1 on appeal beginning at page 4 of the Answer and the Examiner's corresponding responsive arguments beginning at page 11 of the Answer appear to us to fail to consider all of the limitations required by the independent claims on appeal. More specifically, we agree with Appellant's positions set forth at the top of page 9 of the Brief which are set forth in a most succinct and persuasive manner:

Claim 1:

In Chen et al., when a need arises to check a file in a client computer, the virus checking server sends a virus

checking program to the client computer, and the client computer executes the virus checking program to check the file in the client computer. In contrast, in the method of applicant's claim 1, when a need arises to check a file in a first file server, the first file server sends the file data to the virus checking server, and the virus checking server executes the virus checking program to scan the file data in the virus checking server.

In contrast to the rather specific dialogues occurring between the first and second file servers in representative independent claim 1 on appeal, as just noted by Appellant, Chen does not send file data from one file server to another, second file server for executing virus checking functions at the second file server, but rather sends virus checking program objects, iteratively if necessary, to the effective server where the data file is located. The Examiner's positions never come to grips with the general concept as detailed in each of the respective independent claims 1, 13, 20, and 38 on appeal.

Independently of the Examiner's views with respect to Chen's teachings, we note that the closest apparent approach that Chen comes to as to the requirements of the claims on appeal is the modified version of figure 4B as set forth in figures 6A and 6B, the latter discussion of which begins at column 21. The virus information expert system 625 in figure 6A is detailed in figure 6B, such as to include the conditional data module 636. The discussion at columns 21 and 22 generally indicate that certain data is transferred or otherwise collected by this conditional data module for operation upon by the other modules shown, but the nature of the

information that is collected by or otherwise sent to the conditional data module is not consistent with the nature and overall process requirements of the independent claims on appeal.

Because we must reverse the rejection of independent claims 1, 13, 20, and 38 in the Examiner's first-stated rejection of various claims relying on Chen under 35 U.S.C. § 102(b), we also reverse the rejection of the remaining dependent claims in that rejection. Correspondingly, because Cassagnol and Lam do not respectively cure the deficiencies of Chen as to the remaining dependent claims that are argued in the second and third-stated rejections, the rejection of them is reversed as well.

In view of the foregoing, the decision of the Examiner rejecting various claims on appeal under 35 U.S.C. §§ 102 and 103 is reversed.

REVERSED

clj

RICHARD AUCHTERLONIE
NOVAK DRUCE & QUIGG, LLP
1000 LOUISIANA
53RD FLOOR
HOUSTON, TX 77002